IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 158 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

B S DESAI

Appearance:

1. INCOME TAX REFERENCE No. 158 of 1988

MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1

MR HM TALATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 30/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1982-83:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in confirming the order made by the Commissioner of Income-tax (Appeals) deleting the interest income from the total income of the assessee ?"

2. The assessee made a gift of Rs.1,70,700/- on 17-10-1979 by settling a trust in favour of his son's HUF. The said HUF consisted of his son and his wife and his minor children. On the basis of the observations made in the assessment orders for assessment years 1980-81 and 1981-82, the Income-tax Officer added interest income of Rs.19,284/- to the total income of the assessee by invoking provisions of sec. 64(1)(vi) of the Income-tax Act, 1961 (hereinafter referred to as `the Act'). The Commissioner of Income-tax (Appeals) deleted this interest income from the total income of the assessee following the C.I.T.'s appellate decision for assessment years 1980-81 and 1981-82. The Appellate Tribunal confirmed the order passed by the CIT (Appeals). Hence, this reference at the instance of the revenue.

3. We have heard Mr Akil Kureshi learned counsel for the revenue and Mr HM Talati learned counsel for the respondent-assessee.

4. The ITO had followed the assessment order for assessment years 1980-81 and 1981-82 while passing the order for the assessment year under consideration i.e. 1982-83. It has been noted by the Tribunal that against the order of CIT (Appeals) allowing the assessee's appeals for the said assessment years 1980-81 and 1981-82 the revenue had not carried the matter in appeal even before the Tribunal. The Department's representative had stated before the Tribunal that the matter was not carried further because of the smallness of the amount involved. The Tribunal has found that the amount involved in the earlier year was about Rs.11,700/in the assessment year 1981-82 while the amount involved in the present case was Rs.19,284/-. Hence on the ground that since the revenue had not preferred an appeal to the Tribunal against the appellate order for the assessment year 1981-82 and that the amount involved was small, the Tribunal dismissed the appeal of the revenue.

5. Having heard the learned counsel for the parties, we are also of the view that looking to the smallness of the amount involved and also considering the fact that the revenue had not challenged the order of CIT (Appeals) for the assessment years 1980-81 and 1981-82, we are not inclined to examine legal controversy about interpretation of provisions of sec.64(1)(i) and that the Tribunal was also justified in not going into that controversy.

6. In the result, our answer to the question referred to us is in the affirmative i.e. in favour of the assessee and against the revenue.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (D.A. Mehta,J)

zgs/-